

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT HOLMES and DEPARTMENT OF JUSTICE,  
FEDERAL CORRECTIONAL INSTITUTION, Bastrop, TX

*Docket No. 02-838; Submitted on the Record;  
Issued September 17, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant is entitled to wage-loss compensation for the period May 19 through September 7, 2000 due to his accepted thoracic and lumbar strains.

On April 24, 2000 appellant, then a 35-year-old accounting technician, filed a traumatic injury claim (Form CA-1) alleging that he injured his back on April 21, 2000 when he slipped on a wet floor.<sup>1</sup> The Office of Workers' Compensation Programs accepted the claim for lumbar and thoracic strains.

In an April 25, 2000 disability slip, Dr. Bryan T. Irvin, an attending Board-certified family practitioner, noted that appellant had been under his care since April 25, 2000 and that appellant could return to work on May 8, 2000.

Appellant was released to return to work on May 15, 2000 by Dr. Irvin.<sup>2</sup>

In a May 22, 2000 disability slip, Dr. Irvin noted that appellant had been under his care since May 19, 2000 and under remarks stated "no lifting/carrying over 15 (lbs) [pounds] until released by [the] Spine Center."

In a letter dated June 1, 2000, appellant noted his continuation of pay was terminated on May 19, 2000 and requested leave under the Family Medical Leave Act.<sup>3</sup>

Dr. Irvin, in a June 2, 2000 disability slip, indicated no full release to work until appellant was "released by [the] Spine Center [doctor]"

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<sup>1</sup> The employing establishment removed appellant from its employment effective September 30, 2000.

<sup>2</sup> In a report of termination of disability and/or payment (Form CA-3), the employing establishment noted that appellant refused to return to work on May 19, 2000 despite being released to work by his physician.

<sup>3</sup> Appellant also requested assistance in filing a stress claim.

In a June 5, 2000 report, Dr. Lorraine Papa, Ph.D., R.N., CB indicated she was treating appellant for stress and requested he be released from work beginning June 2, 2000.

In a June 6, 2000 report, Dr. Don K. Carlson, a chiropractor, diagnosed thoracic and lumbar subluxations by x-ray and thoracic and lumbar sprains. He concluded that appellant would be disabled “for at least six weeks or [un]till further notice.”

In a June 23, 2000 noted, Dr. Carlson stated that he was treating appellant for an employment injury and that he was totally disabled for at least six weeks or until further notice.

Dr. Carlson informed the employing establishment that appellant would be able to return to work on September 6, 2000, in an August 31, 2000 letter.

By letter dated March 26, 2001, the Office informed appellant that additional evidence was required to process his wage-loss claim for the period May 19 through September 7, 2000 and advised him of the information required by both him and the employer.

By decision dated May 15, 2001, the Office denied appellant’s claim for wage loss for the period May 19 through September 7, 2000. The Office noted that appellant was on continuation of pay from April 24 through June 7, 2000 and leave without pay status for the period June 8 through September 7, 2000.

The Board finds that appellant has not established his entitlement to wage-loss compensation for the period May 19 through September 7, 2000 due to his accepted thoracic and lumbar strains.

It is a well-settled principle of workers’ compensation law that if the medical evidence establishes that the residuals of an employment-related impairment are such that, from a medical standpoint, they prevent the employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>4</sup> The general test of loss of wage-earning capacity is whether a claimant’s work-related impairment prevents him from engaging in the kind of work being performed when injured.<sup>5</sup>

To establish a causal relationship between appellant’s accepted lumbar and thoracic and any related period of disability, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

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<sup>4</sup> *Bobby W. Hornbuckle*, 38 ECAB 626, 630 (1987).

<sup>5</sup> *Elis Loveless, Jr.*, 40 ECAB 368, 373 (1988).

<sup>6</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

In this case, appellant failed to submit such rationalized medical opinion evidence. In support of his claim for wage-loss compensation for the period May 19 through September 7, 2000 appellant submitted disability slips dated May 22 and June 2, 2000 by Dr. Irvin, reports dated June 6 and 23, 2000 from Dr. Carlson and a disability slip from Dr. Papa.

Initially the Board notes that the opinion of a nurse is of no probative value under the Federal Employees' Compensation Act. A "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law and chiropractors only to the extent that their reimbursable services are limited to treatment of a subluxation as demonstrated by x-ray to exist.<sup>7</sup> Lay individuals such as physician's assistants, nurse practitioners and social workers are not competent to render a medical opinion.<sup>8</sup> Furthermore, Dr. Papa was treating appellant for stress which was not a condition accepted by the Office. Thus, her report is insufficient to support appellant's claim for wage-loss compensation.

Regarding the reports by Dr. Carlson, the Board finds that these reports are also insufficient to support appellant's claim for wage-loss compensation. The Board has held that medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.<sup>9</sup> Dr. Carlson, in his reports, merely concluded that appellant was totally disabled and would be for approximately six weeks without providing any medical rationale regarding whether appellant's April 21, 2000 employment injury caused him to be totally disabled from his employment when appellant had been released to work on May 19, 2000 by Dr. Irvin. In addition, the Board notes that the record contains no evidence that the Office accepted thoracic and lumbar subluxations by Dr. Carlson. In this connection, Dr. Carlson, in his report dated June 14, 2000, under clinical findings reported palable subluxation in thoracic and lumbar spine. Treatment recommended was spinal manipulation with therapy. A x-ray report dated June 7, 2000 shows lumbar and thoracic subluxations. However, the x-ray report does not show the interpretation was by Dr. Carlson or a physician. This being the case, a diagnosis of subluxation of the spine has not been demonstrated by Dr. Carlson or shown that the condition found was causally related to the employment incident.

Lastly, Dr. Irvin's May 22 and June, 2000 disability slips are also insufficient to support appellant's contention that he was totally disabled from his work. In both the May 22 and June 2, 2000 disability slips, Dr. Irvin referred appellant to the Spine Center. In the May 22, 2000 disability slip, Dr Irvin stated "no lifting/carrying over 15 [pounds] until released by [the] Spine Center" and in his June 2, 2000 slip stated he was not giving appellant a full release to work until appellant was "released by [the] Spine C[enter] [doctor]." These reports fail to provide any medical rationale supporting appellant's contention that he remained totally disabled from his employment for the period May 19 through September 7, 2000 due to his April 21, 2000 employment injury, especially when the physician had previously released appellant to

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<sup>7</sup> 5 U.S.C. § 8101(2).

<sup>8</sup> See *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

<sup>9</sup> *William C. Thomas*, 45 ECAB 591 (1994).

work on May 19, 2000. Moreover, appellant did not submit medical reports from the Spine Center showing that he was treated there.

The January 3, 2002 and May 15, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
September 17, 2002

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member